

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on February 2, 2005 at
3:10 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Alan Olson, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)
Rep. Brady Wiseman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Cynthia Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp markers follow testimony.

Committee Business Summary:

Hearing & Date Posted: HB 388, 1/21/2005
Executive Action:

HEARING ON HB 388

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 388**, Montana infrastructure authority for transmission lines. **REP. OLSON** pointed out that Montana has the largest coal reserves in the United States and ranks sixth in coal production. Montana also has significant wind energy resources and ranks fifth in the nation for overall wind energy potential. Therefore, Montana has tremendous potential to diversify Montana's economy and increase revenue. **REP. OLSON** identified transmission constraints as a barrier to development of Montana's coal and wind resources. **REP. OLSON** would like to see the removal of these impediments in an effort to facilitate the sustainable development of Montana's coal and wind resources. **REP. OLSON** stated it is in the public interest to allow the Montana Transmission Authority to support private entities in the development of electrical energy transmission facilities and related supporting infrastructure. **REP. OLSON** explained the infrastructure authority would consist of a seven-person board and would be attached to the Department of Commerce for administrative purposes. **REP. OLSON** explained the authorities granted to the new board under HB 388, and explained the transmission authority would be exempt from the Major Facility Siting Act (MFSA), but would fall under the provisions of the Montana Environmental Policy Act (MEPA). In addition, the transmission authority would have up to \$750 million in bonding authority, which would consist of revenue bonds and would not create an obligation on behalf of the State of Montana.

Proponents' Testimony:

Bill Pascoe, Great Northern Power Development, has worked for 25 years in the power industry. Great Northern Power Development is the largest owner of private coal reserves in North America. Mr. Pascoe reported utilities in Washington, Oregon, and Idaho have expressed interest in obtaining coal from Montana. **Mr. Pascoe** believed HB 388 will make Montana's projects more competitive. **Mr. Pascoe** reported legislation similar to HB 388 has been introduced in North Dakota and Wyoming. **Mr. Pascoe** suggested Montana's transmission can be economically upgraded to export between 500 - 750 MW of power. **Mr. Pascoe** believed larger transmission projects will have to be considered if Montana desires to unlock the resource potential in its coal fields.

Alan Evans, Roundup, submitted written testimony, correspondence with Governor Schweitzer, and a white paper and testified as a proponent of HB 388.

[EXHIBIT\(feh26a01\)](#)

David Hoffman, PPL Montana, submitted written testimony as a proponent of HB 388.

[EXHIBIT\(feh26a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 19 - 20.9}

Jerry Driscoll, AFL-CIO, emphasized Montana needs revenue and HB 388 would not be a risk to the taxpayer, and transmission charges would be paid by the end user. **Mr. Driscoll** urged support of HB 388.

Dan Flynn, International Brotherhood of Electrical Workers (IBEW), represents the people who would build and maintain the power lines. Mr. Flynn reported there are approximately 160 people in this field statewide who are unemployed.

Tom Ebzery, Puget Sound Energy of Bellevue, Washington, and Avista Corp. of Spokane, Portland General Electric of Portland, and Pacific Corp., Portland, supported the concept of HB 388. **Mr. Ebzery** reported all four of the entities he represents have wind in their future, and two entities have coal in their future. **Mr. Ebzery** suggested HB 388 could help solve transmission problems.

John Fitzpatrick, Northwestern Energy (NWE), testified that NWE is very interested in development of a competitive market for electricity in Montana. **Mr. Fitzpatrick** believed HB 388 would encourage the development of additional generation resources.

Greg Van Horssen, Black Hills Energy Corporation, supported HB 388 and the concept behind the legislation.

Jim Mockler, Montana Coal Council, testified that in the 1970s the Montana Legislature made a decision not to compete with Wyoming for coal development. **Mr. Mockler** stated Montana has an opportunity to move forward and suggested HB 388 is a valuable tool and is without cost to the people of Montana.

{Tape: 1; Side: B}

Opponents' Testimony:

Greg Jergeson, Montana Public Service Commission, submitted written testimony in opposition to HB 388.

EXHIBIT (feh26a03)

Gary Buchanan, representing himself, owns and operates an investment firm but appeared on behalf of himself. **Mr. Buchanan** spoke about Montana municipal bonds. **Mr. Buchanan** opposed using the State of Montana's name and suggested \$750 million of municipal bonding authority threatens the Montana municipal market. **Mr. Buchanan** thought the bonding should be left with good-credit utilities in the private sector. **Mr. Buchanan** stated Montana has never had credit problems and noted an unrated school bond in Montana trades on the market, as well as a AAA bond from other states. **Mr. Buchanan** opposed any use of the municipal bond market for private sector purposes.

Michele Reinhart, Northern Plains Resource Council, testified that HB 388 will exempt transmission lines from MSFA. **Ms. Reinhart** directed the committee to Page 17, Section 27, and pointed out the legislation changes the definition of "facility." **Ms. Reinhart** also had concerns about how the siting of these projects would be coordinated with local landowners and local governments.

{Tape: 1; Side: B; Approx. Time Counter: 16.7 - 18.8}

Patrick Judge, Montana Environmental Information Center (MEIC), stated MEIC has both fiscal and environmental objections to HB 388. **Mr. Judge** agreed with the concerns expressed by Northern Plains Resource Council. **Mr. Judge** submitted a fact sheet that chronicled the history of MSFA and the amendments that have been made throughout the years. **Mr. Judge** depicted MSFA as the most abused statute on the books. **Mr. Judge** provided a history of HB 474 from the 2001 Legislative Session and how HB 474 was repealed by Montana voters. **Mr. Judge** submitted a newspaper article from the September 18, 2001, issue of the *Independent Record*. **Mr. Judge** provided a summary of HB 474 and directed the committee to Page 3 where it was recommended the Montana Power Authority created by HB 474 be repealed. **Mr. Judge** also commented that he opposed the structure of the proposed authority, the sweeping

powers granted to the authority, and the lack of accountability of the authority. **Mr. Judge** urged the committee to defeat HB 388.

[EXHIBIT\(feh26a04\)](#)

[EXHIBIT\(feh26a05\)](#)

[EXHIBIT\(feh26a06\)](#)

Derek Goldman, Montana Audubon, testified that HB 388 is circumventing MFSA and suggested that was not responsible. **Mr. Goldman** urged the committee to not pass HB 388.

Informational Testimony:

{Tape: 2; Side: A}

Brad Molnar, Montana Public Service Commissioner, pointed out that North Dakota's number-one export is baseload electricity and Montana's number-one export is malting barley to Mexico and asked the committee to note the difference in the two economies.

Commissioner Molnar did not feel that other models have been considered to determine the most effective use of time and money.

Commissioner Molnar stated he believes there is a place for government to become involved in Montana's transmission.

Commissioner Molnar noted Wyoming's idealness for coal development and its attractiveness to private industry.

Commissioner Molnar pointed out the coal in Otter Creek belongs to Montana, and no one has bid for that coal. **Commissioner Molnar** believed there should be a coordinated effort for generation and transmission of coal.

Tom Ring, Department of Environmental Quality (DEQ), stated he was available to answer questions about MFSA.

Questions from Committee Members and Responses:

REP. ROBYN DRISCOLL, HD 51, BILLINGS, noted that similar legislation passed in Wyoming, and this year Wyoming has asked for an additional \$6.5 million more. **REP. DRISCOLL** wanted to know how to prevent that same thing from occurring next legislative session in Montana. **REP. OLSON** suggested that if the same thing occurs in Montana, the legislature could say "no" in the appropriations process.

REP. DRISCOLL asked why not finance through the private sector.

REP. DRISCOLL expressed concerns about Montana being held morally responsible if the bond defaulted. **REP. OLSON** responded the bonding authority in Wyoming is second in nature, and Wyoming

promotes private funding, and the bonding is in place as a stop-gap measure. **REP. OLSON** referred **REP. DRISCOLL** to Section 6, Page 5, Line 12.

REP. DRISCOLL wondered if private companies had expressed an interest in building and financing transmission. **REP. OLSON** responded one private entity had expressed an interest if Montana would assist in the permitting process. This would leave Montana out of the bonding process.

REP. HAL JACOBSON, HD 82, HELENA, asked **Mr. Buchanan** about Line 28, Page 2, and the definition of "bonds." **Mr. Buchanan** clarified general obligation bonds are not involved, and he is opposing the HB 388 because of the use of revenue bonds. **REP. JACOBSON** asked to what extent **Mr. Buchanan** believed this type of situation potentially jeopardizes Montana's bond rating. **Mr. Buchanan** replied it could easily not impact the general obligation credit worthiness of the state, but could impact Montana's reputation.

REP. GEORGE GROESBECK, HD 74, BUTTE, asked why the Montana Transmission Authority would not have oversight by the PSC. **REP. OLSON** explained the primary purpose of the transmission is to take power out of state and would, therefore, be regulated by the Federal Energy Regulatory Commission (FERC). **REP. OLSON** did not feel dual regulation would be necessary.

REP. GROESBECK asked to be directed to the specific section of HB 388 that would protect Montana consumers. **REP. GROESBECK** was concerned about the bonds, the superpowers being given to the Montana Transmission Authority, and was also concerned about how to protect the ratepayers of Montana and how those ratepayers would benefit from the Montana Transmission Authority. **REP. OLSON** pointed out that anyone who proposes transmission in Montana has the power of eminent domain. In addition, the end users of the power will be the ones to pay the tariff. **REP. OLSON** pointed out that there will be no new generation in Montana without transmission. **REP. OLSON** cited all the new proposed generation in Montana that cannot occur without transmission.

REP. GROESBECK again asked what would protect Montana ratepayers. **REP. GROESBECK** had concerns about generating large quantities of electricity and shipping that electricity out of state. **REP. OLSON** stated there is no guarantee, and that people will bring power contracts to NWE, who will bring them to the PSC for approval. The role of the PSC is to protect the ratepayer, as

well as the utility. **REP. OLSON** declared there is no competitive energy market in Montana today.

REP. GROESBECK referred to Section 5, Page 4, Line 26, and the fact that the transmission authority may establish reasonable fees and wondered who would determine what "reasonable" is. **REP. OLSON** assumed those rates would have to be approved by FERC.

REP. BRADY WISEMAN, HD 65, BOZEMAN, recalled testimony that increased transmission out of Montana will facilitate an increase in market power for the incumbent power provider in Montana.

REP. WISEMAN asked if PPL would agree with that assessment. **Mr. Hoffman** emphatically replied no, and believed Commissioner Jergeson was making an assumption that PPL Montana was advocating its ownership of the wholesale transmission, and stated that is not the case. **Mr. Hoffman** believed PPL Montana is advocating economic development for Montana and an expanded market from which Montanans could choose its power supply, and an expanded market which Montana generation could sell into.

REP. WISEMAN asked if PPL's market power within the Montana electricity market would be increased by the creation of large transmission capability. **Mr. Hoffman** clarified "expanded market" did not necessarily mean "expanded market power." **Mr. Hoffman** suggested an expanded market will decrease concerns about market power by opening up not only supply sources from which Montanans could choose, but also the market into which Montana generation could be sold.

REP. WISEMAN stated he has heard for many, many years about the power of the free market and asked when the executives and board of directors of PPL would be authorizing a \$750 million corporate bond for the purpose of investing in transmission facilities.

Mr. Hoffman could not answer the question but pointed out that \$750 million was the amount of PPL's investment in Montana in 1999 when it purchased the assets, as well as created 500 jobs for Montanans and provided competitively priced electricity. **Mr. Hoffman** pointed out that PPL Montana is providing electricity to NWE at \$10 less per megawatt than what the ratepayers are paying. **Mr. Hoffman** clarified that PPL Montana does not have any plans at the current time to invest in wholesale transmission and does not own any wholesale transmission in Montana.

VICE-CHAIRMAN HIMMELBERGER acknowledged that the issues before the committee are emotional and reminded the committee, as well as the witnesses, to always be respectful.

REP. WAYNE STAHL, HD 35, SACO asked about the dollars mentioned in Exhibit 3 and ask where that Wyoming money was requested from. **Commissioner Jergeson** was uncertain how Wyoming structured its budget, but knew it came through the Wyoming legislature. **Commissioner Jergeson** thought HB 388 should probably have a fiscal note describing its impact on the general fund.

REP. STAHL asked **Mr. Buchanan** if Montana used a small mix of revenue bonds to help private industry, it could still be harmful to Montana's reputation. **Mr. Buchanan** replied he would be against using any form of state bonding.

REP. STAHL suggested the authority and its powers would be restricted by § 7-1-111 like any local government.

{Tape: 2; Side: B}

REP. OLSON directed **REP. STAHL** to Page 11, Line 28, and stated the other powers denied are already powers denied to local governments. **REP. OLSON** further explained the language is similar to the MFSA that precludes local governments from zoning out transmission.

REP. MARK NOENNIG, HD 46, BILLINGS, requested that **REP. OLSON** address the exemption from MFSA. **REP. OLSON** explained initially MFSA was one-stop shopping for a permit, and one of the major functions of MFSA was to preempt local governments from shutting out a project. **REP. OLSON** emphasized that HB 388 would not exempt an entity from complying with other environmental laws.

REP. DAVE GALLIK, HD 79, HELENA, asked **REP. OLSON** why he did not sign the fiscal note. **REP. OLSON** stated there was a charge for approximately \$70,000 that would go to DEQ to take part in some of the studies. **REP. OLSON** explained the intention of HB 388 is that any money used for the assistance of other agencies would be held out of that agency's statutory appropriation.

REP. GALLIK asked **Mr. Ebzery** and **Mr. Hoffman** whether they would agree to an increase in the Wholesale Energy Transmission (WET) tax to backfill that amount now that HB 388 would take funding from the WET tax for purposes of funding the \$1.5 million. **Mr. Ebzery** and **Mr. Hoffman** both replied they would not support a WET tax increase.

REP. GALLIK declared he is a capitalist, but that he is also an advocate for public power in Montana. **REP. GALLIK** asked why

there are so many companies interested in generation, but no one seems to want to get involved in the transmission business.

Mr. Pascoe reported the generation side is an open and free market, while transmission continues to be regulated. In addition, the returns for generation are greater. **REP. GALLIK** wondered if government involvement would scare off private industry. **Mr. Pascoe** replied the bill encourages private investment in transmission systems. **REP. GALLIK** asked if **Mr. Pascoe** would be interested in the generation business if Montana created a public generation authority. **Mr. Pascoe** clarified the intent of the legislation is not to have tax-free bonds. **Mr. Pascoe** opined far fewer companies are interested in transmission than are interested in generation.

REP. GALLIK inquired about MFSA and what the review requires in terms of criteria; and, whether the review is substantive and would place mitigation measures on permits to address environmental and public health and safety concerns. **REP. GALLIK** also asked whether there were any health or public safety concerns in building a large transmission system. **Mr. Ring** submitted a copy of §§ 75-20-104(8) and -301 and reviewed the statute with **REP. GALLIK**.

EXHIBIT(feh26a07)

{Tape: 2; Side: B; Approx. Time Counter: 3.4 - 15.8; Comments: Questioning by REP. GALLIK}

REP. WISEMAN asked **Mr. Buchanan** if he was familiar with the Washington public power supply system bond default of the 1980s. **Mr. Buchanan** stated he was familiar with the bond default and explained the effects of the default on the Washington municipal bond market. **Mr. Buchanan** stated the default hurt the municipal bond market in general and, specifically, hurt Washington. **REP. WISEMAN** asked **Mr. Buchanan** to explain how the default affected school districts, hospitals, and county governments. **Mr. Buchanan** stated a default would severely hurt the state's name in the market. **REP. WISEMAN** asked if default could mean other government entities in Montana could be required to pay a higher interest rate, and **Mr. Buchanan** agreed it could.

REP. WISEMAN asked **Commissioner Jergeson** to describe what happens to the wholesale power market in Montana if Montana does build 500 or 1000 MW of transmission to the west coast and how it will affect Montana ratepayers. **Commissioner Jergeson** referred **REP. WISEMAN** to the transmission of natural gas and the constraints on the natural gas markets into the mid-west. If Montana electricity is less expensive, given the market that is defined

by the constraints in the transmission system, and if those constraints are eliminated to a broader market that is higher, prices to customers in Montana will go up.

REP. WISEMAN referred to Section 5, Page 4, the powers of the proposed transmission authority, and wondered where the oversight by elected officials would be provided. **REP. OLSON** responded the board will be appointed by the Governor, and that the legislature has oversight over all appointed boards. **REP. OLSON** suggested the Energy and Telecommunications Interim Committee would have oversight over the board. In addition, the Legislative Audit Division could perform an audit at any time.

REP. WISEMAN inquired what oversight elected officials would have over the actual decisions of the board to acquire distribution lines. **REP. OLSON** suggested it would be the same oversight the legislature has over the Department of Transportation when it wants to build or expand highways.

REP. WISEMAN asked if there was a provision in HB 388 for the legislature to appropriate any of the money the transmission authority could raise with its bonding power. **REP. OLSON** responded, "As these are revenue bonds, no."

REP. DRISCOLL was interested in environmental, health and/or public safety concerns with the building of transmission lines. **Mr. Ring** explained each project is different in terms of size, location and design; but, in general, there is interference with land uses, farming practices, planned irrigation projects, visual impacts of transmission lines, disruption to wildlife and wildlife habitats, and impacts on recreation areas.

{Tape: 3; Side: A}

REP. DRISCOLL asked about specific projects and the affects of those projects on the environment, public health and safety. **Mr. Ring** recalled an eminent domain proceeding from Clyde Park to Dillon. **Mr. Ring** explained landowners believed the department had not adequately considered visual impacts and routed the transmission line to avoid those impacts. **Mr. Ring** recalled the case went to the Montana Supreme Court, which made a finding of public necessity.

REP. DIANE RICE, HD 71, HARRISON, wanted to know if eminent domain and the MSFA were the reasons no private sector enterprise is interested in building transmission lines in Montana. **Mr. Buchanan** replied it is hard to know what people will come forward

and suggested this may be an attempt to transfer the political risk of eminent domain to a public entity.

REP. KARL WAITSCHIES, HD 36, PEERLESS, asked Commissioner Molnar to discuss the situation in North Dakota, how they handled the bonding and how the bonding affected North Dakota ratepayers. **Commissioner Molnar** explained in Montana there is a concept that the state will build it if private industry does not build it. In North Dakota, the state does not build anything unless it partners up with a private company. **Commissioner Molnar** suggested the North Dakota model minimizes risk, so neither the bonds, nor the ratepayers, are at risk.

REP. NOENNIG asked **Mr. Pascoe** for his opinion about power being generated for Montana being exported out of Montana due to the construction of new facilities. **Mr. Pascoe** identified the issue as one of the most misunderstood issues in Montana energy policy. **Mr. Pascoe** did not believe there was a transmission bottleneck in Montana and that the transmission system was capable of delivering power to all Montana customers and exporting power out of state. **Mr. Pascoe** believed a bottleneck could occur if substantial generation was built without any new transmission lines. **Mr. Pascoe** identified an existing balance between generation and transmission capacity.

REP. JACOBSON noted the composition of the board and asked **REP. OLSON** if he would consider adding someone from the labor industry, a Native American member, and someone from the environmental arena. **REP. OLSON** responded that he believed it would be important that board members be educated in energy and transmission. **REP. JACOBSON** requested **REP. OLSON** to give his suggestion further consideration.

REP. GALLIK asked Commissioner Jergeson what would happen if the transmission activities of the authority do not generate the money necessary, and whether the person left holding the bag could be the ratepayers or the taxpayers of Montana. **Commissioner Jergeson** stated transmission markets are fairly inelastic and when there is congestion, the price can be bid up. On the other hand, if the transmission is overbuilt, the value collapses. **Commissioner Jergeson** suggested the private sector may not step up to the plate because of the risk. Therefore, a government program could reduce the risk. **Commissioner Jergeson** suggested further information is needed from bond counsel on private-activity bonds and their tax-exempt status.

Closing by Sponsor

REP. OLSON clarified private-activity bonds are not tax exempt.

REP. OLSON pointed out that Wyoming has a transmission authority, and South Dakota, North Dakota, Idaho, and Utah are looking at similar legislation. **REP. OLSON** stated the transmission authority would be involved with regional transmission organizations. **REP. OLSON** stated if Montana is going to build generation, it will need to build transmission. **REP. OLSON** reminded the committee that the PSC has the power to approve any proposed rate increases. In addressing the issue of not having the proposed transmission authority fall under the supervision of the PSC, **REP. OLSON** pointed out it would be unusual for one state agency to regulate another state agency. **REP. OLSON** reiterated that if development is going to proceed in Montana, there needs to be a way to ship the power out of Montana. **REP. OLSON** summarized Montana, and in particular Eastern Montana, needs this legislation to pass.

ADJOURNMENT

Adjournment: 5:35 P.M.

REP. ALAN OLSON, Chairman

CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT ([feh26aad0.TIF](#))